

Local Government Employee-Management Relations Board E-Newsletter

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Decision Expected Soon on SB 241 Case

The Board held a hearing on Monday, September 14th in case 2015-011, SEIU, Local 1107 v. Clark County. Pursuant to Board order, post-hearing briefs are due to be filed no later than October 29th. The Board is fully expected to render a decision on this important case at its next meeting, to be held on November 17th through 19th in Las Vegas. We lead this month's e-newsletter with this story due to the widespread interest in this case, which will require the Board to interpret two sections of SB 241, which became law on June 1st.

SB 241 made a number of changes to NRS 288, the EMRB's enabling statute. Two of these changes are at issue in this case. The first concerns the issue of paid union leave. The new law requires employee organizations to either pay the full cost of any union leave (i.e., leave taken by union officials to conduct union business) or else negotiate concessions to pay the full cost of that leave. On June 4th the County sent a letter to SEIU, Local 1107, ordering SEIU President Martin Bassick back to his County job.

A few days later the County sent another letter to SEIU, Local 1107, advising the union that it had stopped all raises. This letter cited the provision in SB 241 concerning evergreen clauses, which is the second of the two parts of SB 241 that the Board will need to interpret when it reaches a decision. SEIU, Local 1107 thereupon filed a prohibited practices complaint, alleging that the County had both implemented unilateral changes and had engaged in bad faith bargaining.

In order to arrive at a decision the Board will review the transcript of the hearing, as well as the exhibits admitted into evidence at the hearing. The Board will further consider the post-hearing briefs to be filed on October 29th. Moreover, the Board will also consider the eight *amicus* briefs previously filed with the agency - 7 from employee organizations and 1 from two local governments.

The EMRB will issue a press release when the anticipated order is finally issued. We will also send a copy of the press release to everyone on our agency's mailing list. Barring unforeseen circumstances, we expect the order to be released the week following the Board meeting, which would be the week of Thanksgiving.

Inside This Issue

- 1 Decision Expected Soon on SB 241 Case** – Read about the status of this important case
- 2 On the Horizon** – Learn about our upcoming meetings
- 2 Recent Decisions** – Read about recent decisions
- 3 In the Queue** – See the cases waiting to be heard
- 3 Regulations Update**
- 3 It's Time for the Required Annual Filings** – Watch for an E-Mail

On the Horizon

The next meeting of the Board will be held on Tuesday, November 17th through Thursday, November 19th in Las Vegas. The agenda for this meeting will be issued on Monday, November 9th. One case is currently scheduled for this meeting, A1-046133, SEIU, Local 1107 v. Southern Nevada Regional Housing Authority. The parties in this case have been without a new contract for more than 2 ½ years and have had numerous negotiations and mediation sessions. In this case SEIU, Local 1107 alleges that the Housing Authority engaged in bad faith bargaining in part by unilaterally instituting furloughs. The Housing Authority counterclaimed that the union also engaged in bad faith bargaining in part by misrepresenting management's offer. The Housing Authority also alleges that it is not a local government and thus not subject to the jurisdiction of the EMRB. Besides this case the Board is also expected to rule on Case 2015-011, SEIU, Local 1107 v. Clark County (i.e., the SB 241 case).

The Board will again meet in Las Vegas in December. Currently scheduled is A1-046120, IAFF, Local 1908 v. Clark County. This case concerns whether the County has the right to place a previously appointed person into a bargaining unit and have that person be exempt from the provisions of the collective bargaining agreement. The Board is expected to add an additional case for December.

Recent Decisions

Please note that summaries of recent decisions are provided for informational purposes only and are not intended to substitute for the opinions of the Board. These summaries should not be cited to or regarded as legal authority. The EMRB will provide copies of the decisions upon request. They also may be found on our website.

Item 808; A1-046119 & A1-046121, Shannon D'Ambrosio v. Las Vegas Metropolitan Police Department

Ms. D'Ambrosio was a probationary forensic scientist trainee in the famous CSI unit at Metro. LVMPD has a personal appearance policy for its employees in this unit as they are called upon to testify in court and LVMPD does not want an employee's appearance to detract from the employee's ability to present as a credible expert witness. One day during her probation, Ms. D'Ambrosio came to work with pink hair, which she promptly re-dyed. Two months later she came to work with blue hair, which was covered with a wig, but which co-workers noticed under her wig. The department then made a contact report, which was not discipline. The department also denied her union representation, claiming the meeting was not disciplinary in nature. The department also extended her probation as allowed under the collective bargaining agreement. Then in the next month the employee came to work with a "shaved" hairstyle, which resulted in her being non-confirmed. Ms. D'Ambrosio thereupon filed the instant action.

The Board ruled that the employee's Weingarten rights did not apply as there was no objective reasonable belief that the meeting could have led to discipline. The Board also held that Ms. D'Ambrosio was not discriminated against based upon personal reasons as "personal reasons" do not include reasons that are directly related to a core job function, such as compliance with the personal appearance policy. The Board further held that LVMPD had not made a unilateral change to the bargained-for disciplinary procedures since Ms. D'Ambrosio had not been terminated (i.e., disciplined) but had only been non-confirmed.

Item 809; A1-046113; Police Officers Association of the Clark County School District v. Clark County School District

In this case the Board found that CCSD had committed bad faith bargaining in three ways. This case concerned an attempt by the parties to finalize a collective bargaining agreement for 2013-2014. During negotiations, the chief negotiator for CCSD, Dr. Goldman, would not accept or reject any union proposal but would only state that he needed to consult with the school board, who would then make the decision, thus making Dr. Goldman nothing more than a messenger. Good faith bargaining requires that a bargaining team have some level of authority. Secondly, Dr. Goldman stated that the school district had a stance of never making any proposals or counterproposals. This, too, is a well-recognized indicator of bad faith bargaining. During September 2013 through November 2013 the parties came to an agreement (even though four issues remained outstanding) and each ratified the new CBA – although as it turned out each side ratified a different version of the new CBA. When the union notified CCSD of the problem CCSD refused to meet with the union to rectify the problem and instead stated that the school board had ratified the new CBA. This refusal to meet to rectify was a third instance of bad faith bargaining. The Board also noted that the union was not without fault in the situation and that, perhaps, it would have also found bad faith bargaining on the part of the union had a counterclaim been filed in the case.

In the Queue...

Once initial pleadings, including pre-hearing statements, have been filed with the EMRB and after any motions to dismiss or defer have been decided, then a case typically goes into a queue, waiting for the Board to decide whether to grant a hearing in the case or dismiss the complaint. Below is a description of the current queue:

The Board has scheduled for November A1-046133, SEIU, Local 1107 v. Southern Nevada Regional Housing Authority.

The Board has scheduled A1-046120, IAFF, Local 1908 v. Clark County for December. Since this case is only expected to take two days it is likely that the Board will schedule an additional case for the third day and that it will do so at its November meeting.

Also, the Board has scheduled 2015-003, John Ducas v. Las Vegas Metropolitan Police Department for January 2016 and 2015-001, Bramby Tollen v. Clark County Association of School Administrators and Professional-Technical Employees for February 2016.

There are currently two cases awaiting hearing dates:

2015-008, Education Support Employees Association v. Clark County School District

2015-013, Eric Brown v. Las Vegas Metropolitan Police Department

Regulations Update

Our e-filing regulations, which are currently temporary and are set to otherwise expire on October 31st, are waiting for final approval from the Legislative Commission, which has now set a meeting for Tuesday, October 27th. If approved by that body, the e-filing regulations would then become permanent.

It's Time for the Required Annual Filings

Every local government and employee organization must annually file a report with the EMRB each November. Last year the EMRB allowed entities to file their annual reports via e-mail. This year we again will allow the annual reports to be filed via e-mail – but this year we are going one step further. Instead of mailing out the forms to each entity we will instead be e-mailing the forms, thus saving time, paper and money. The forms will be e-mailed to the official contact person at each local government and employee organization. If you are the official contact person please look for the form in your e-mail inbox as early as October 21st. If you are no longer the official contact person please forward the e-mail to the person who should now be the official contact person.

If you have any questions on the new process please do not hesitate to contact us at the phone number or e-mail address below.

"About the EMRB"

The Employee-Management Relations Board (EMRB), a Division of the Department of Business and Industry, fosters the collective bargaining process between local governments and their employee organizations (i.e., unions), provides support in the process, and resolves disputes between local governments, employee organizations, and individual employees as they arise.